

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 19**

BULLSEYE GLASS COMPANY

Employer

and

Case 36-RC-5999

AMERICAN FLINT GLASS WORKERS
UNION, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record¹ in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time employees employed by the Employer at its 3722 S.E. 21st Street, Portland, Oregon, facility in the classifications of maintenance assistant, maintenance mechanic, maintenance mechanic assistant, batch room assistant, caster, caster (lead), melter, melter (lead), frit coordinator, trimmer, trimmer lead,

¹ The parties have entered into a post-hearing stipulation which has been made part of the record herein, as Board Exhibit 2.

The parties have filed briefs, which have been duly considered.

puller/packer, sample assistant, sample packing, sample (lead); but excluding all other employees, including studio technicians (R&E department employees), G&E department employees, sales department employees, office clericals, administrative assistants, purchasing clerks, managers, seasonal employees, temporary employees, confidential employees, and guards and supervisors as defined by the Act.

The Employer is engaged in the manufacture of colored glass used in art, crafts, and architecture. Petitioner seeks a unit of approximately 44 production and maintenance employees employed in the Employer's factory. The Employer contends that five studio technicians (also called R&E employees herein) in its research and education department must be included in the Unit, while the Petitioner seeks to exclude them. The parties otherwise stipulated to the appropriate unit. This is the sole issue in this case.

The Employer's factory is located at 3722 S.E. 21st Avenue, Portland, Oregon. There is a warehouse across the street from the factory, but no Unit employees work there who do not also work at the 3722 facility. The Employer also has arrangements with about 30 colleges and art schools in various locations worldwide for training students regarding the materials it produces and how they can be used. The Employer maintains a resource and call center at 1308 N.W. Everett and a gallery at 300 N.W. 13th in Portland. Employees located there are excluded from the Unit. All employees herein, including the R&E employees, work in the factory.

Sam Andreacos is the plant manager of the factory and is the second level supervisor of all employees involved herein. Each of the factory departments, i.e., batchroom, caster, maintenance, melter, quality control, shipping, and R&E (Ben Hall), has its own supervisor who has authority to hire, fire, and discipline employees. The parties have stipulated that Andreacos and Hall each have statutory supervisory authority. Accordingly, I find each to be a supervisor excluded from the Unit. The status of the other "supervisors" was not resolved by stipulation. The record does not clearly resolve their supervisory status in a non-conclusory manner. The only employees working at the factory location other than those sought by Petitioner and the disputed R&E employees are office clericals and managers. The record establishes that all employees in the factory are subject to the same policies and procedures, punch the same time clock, and receive the same fringe benefits.

The production process involves melting glass, casting it, and then annealing (controlled cooling) it in ovens. Production glass is regularly tested by quality control employees (frit coordinator, trimmer and trimmer (lead)) to assure that it meets the Employer's standards for that type of glass. After manufacture, glass is stocked in the warehouse and shipped from there. Regular production glass includes sheets, fractures,² frit (crushed glass in small bits), powder, and paddies,³ in numerous colors, styles, thicknesses, and textures.

R&E employees make glass products separate from those of the regular production line, including color bar, shelf primer, and giftware. They also develop new products or processes which can become part of the regular production. An example is work they did on perfecting the production process for glass rod. It also appears that R&E employees work on other projects that are not directly related to producing the wholesale glass product, although the testimony in this regard is very vague. Such testimony suggests that R&E employees perform work which might be termed experimental with regard

² Undefined in the record.

³ Undefined in the record.

to products and processes. In addition, R&E employees assist non-employee visiting artists and students in their individual projects.

R&E employees are supervised by their own departmental supervisor, Ben Hall. They generally work from 8:00 a.m. to 4:30 p.m., but at times they work at night or on weekends, in order to be able to use production equipment that is being used otherwise during regular weekdays. Current R&E employees' wages range from \$8.00 to \$10.75 per hour, while wages of current production and maintenance employees range from \$8.00 to \$14.00 per hour. The record does not reveal any educational or skill requirements for hire as a studio technician in R&E, or for production and maintenance employees.

R&E employees test some glass, but they do not routinely test all glass manufactured by the Employer. The record provides one example of an occasion on which R&E employees tested a batch of glass, the color appeared to be off by a small amount, a defect which lowered the value of the glass. Further testing by R&E resulted in the glass being categorized for sale differently, and at a higher value, than it otherwise would have been.

R&E employees are, in varying degrees, familiar with the manufacturing process and the production equipment. One studio technician, Jeremy Lepisto, upon hire, was assigned to work for three or four months at a time in each of the production departments sequentially, so that he could learn the processes and equipment, and then train other studio technicians in this regard. There is no evidence that any R&E employees ever interchange with any production employees, although R&E employees sometimes engage in the same or similar work, using the same equipment, but not for production purposes. R&E employees generally work in a separate room adjacent to the factory floor, but also work on the factory floor at times on their own products and projects. There is no specific evidence as to the amount of regular contacts between R&E employees and other employees.

In sum, R&E employees perform separate work, albeit, similar in some respects, from that of production and maintenance employees, under separate immediate supervision. There is no interchange between the two groups. R&E employees have only limited functional integration with the production and maintenance employees, in that some of the work of R&E employees eventually results in new production products or processes, but the record does not establish that such new products and processes are regularly recurring events. There is no evidence that R&E employees problem-solve or fine-tune production on a "today" basis, as opposed to testing and creating processes or changes for the long-term. Similarly, they do not perform day-to-day quality control; that is the task of other employees.

A petitioner is entitled to the unit of its choice, as long as the proposed unit is *an* appropriate unit. The issue is not whether other units are also appropriate, or "more" appropriate; the test is whether the unit petitioned for is *an* appropriate unit. In these circumstances, and inasmuch as no labor organization is seeking to represent the R&E employees in an over-all unit, and since the R&E employees would not become the sole unrepresented employees, I conclude that the R&E employees do not share a strong enough community of interest with the production and maintenance employees such that they *must* be included in the Unit, and I shall exclude them. I rely most heavily on the administrative separation, separate supervision, lack of interchange, lack of day-to-day integration into the production process, and the differing, non-production functions and work (researching product improvement, training or working with students and artisans).

There are approximately 44 employees in the Unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by AMERICAN FLINT GLASS WORKERS UNION, AFL-CIO.

NOTICE POSTING OBLIGATIONS

According to Board Rules and Regulations, Section 103.20, Notices of Election must be posted in areas conspicuous to potential voters for a minimum of three working days prior to the date of election. Failure to follow the posting requirement may result in additional litigation should proper objections to the election be filed. Section 103.20(c) of the Board's Rules and Regulations requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Officer-in-Charge for Subregion 36 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. The Region shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the **new** Subregional Office, 601 SW Second Avenue, Suite 1910, Portland, Oregon 97204, on or before June 12, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission to (503) 326-5387. Since the list is to be made available to all parties to the election, please furnish a total of 4 copies, unless the list is submitted by facsimile, in which case only one copy need be submitted. To speed preliminary checking and the voting process itself, the names must be alphabetized.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by June 19, 2000.

DATED at Seattle, Washington, this 5th day of June, 2000.

/s/ PAUL EGGERT

Paul Eggert, Regional Director
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